Pacific Physicians Services, Inc. d/b/a U.S. Family Care San Bernadino and Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL– CIO, Petitioner. Case 31–RC–7080

April 29, 1994

DECISION AND CERTIFICATION OF REPRESENTATIVE

By Members Stephens, Devaney, and Cohen

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held on September 9, 1993, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to the Regional Director's Decision and Direction of Election issued on August 12. The tally of ballots shows 14 for and 7 against the Petitioner, with 3 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and adopts the findings, conclusions, and recommendations of the hearing officer only to the extent consistent with this decision.

The Employer alleged that prounion conduct by supervisors tainted the election and coerced employees.² The hearing officer assessed the evidence presented at the hearing and concluded that three team leaders³ engaged in prounion conduct. We agree with the hearing officer's evidentiary findings.⁴ He found that Team Leader Christine McElroy, in talking to small numbers of employees, told them that the benefits of having a union included better pay and benefits and job protection. McElroy made these statements beginning in July⁵ and continuing until a week before the Septem-

ber 9 election. Also, sometime in July, McElroy, together with fellow Team Leader Brenda Ellis, asked employee Joan Caffiel how she would vote and tried to tell her that "there were pros to go with the union" and that they thought Caffiel should vote for the Union. In addition, Team Leader Serena Patterson, like McElroy, told small numbers of employees that the benefits of having a union included better pay and benefits and less likelihood of being fired. Patterson made these statements up until about 2 days before the election. Meanwhile, however, the Employer conducted an antiunion campaign, including a mandatory meeting on or about August 20, where it identified the team leaders as supervisors and told employees the team leaders were not to speak for or against the Union.

The hearing officer noted correctly that prounion conduct of statutory supervisors may constitute objectionable conduct warranting setting aside an election in two situations: (1) when the employer takes no stand contrary to the supervisors' prounion conduct, thus leading employees to believe that the employer favors the union; or (2) when the supervisors' prounion conduct coerces employees into supporting the union out of fear of future retaliation by, or rewards from, the supervisors.7 Because the Employer's antiunion position was communicated to the employees, the hearing officer found that he was left with an issue concerning the second element. He further found that the conduct of McElroy, Ellis, and Patterson was grounds to set the election aside. In making this latter finding, the hearing officer noted that the unit was small, consisting of approximately 24 employees, that the 3 team leaders making the prounion statements supervised in aggregate 10 employees, and that these statements were made over a period of several months, until just prior to the election.

We do not agree with the hearing officer. We are not persuaded that the prounion statements uttered by the three team leaders constituted "coercion" that warrants setting aside the election. The statements at issue were not inherently coercive and we find no reason to view a supervisor's prounion statements with more suspicion than a supervisor's antiunion statements. The statements were expressed as personal opinions without any hint of retaliation or reward. At the same time, the Employer made clear throughout the election campaign its opposition to the Union, so there could be no confusion in employees' minds regarding where the Employer stood. We note also that employees might naturally seek the opinion of their team leaders

¹ All dates are in 1993 unless otherwise specified.

² The Employer's objection states:

The Employer asserts that supervisory taint and influence permeates the pre-election period as a result of the activities of certain team leaders, whom the Board determined to be statutory supervisors. The Employer believes that statutory supervisors not only signed authorization cards and attended union meetings, but also solicited support for the union. Most recently, in the week preceding the election one team leader, Chris McElroy, urged at least three employees to vote for the union, thereby intimidating unit employees.

³The August 12 Decision and Direction of Election found these team leaders to be statutory supervisors. The Employer announced this at an August 20 meeting of employees and told employees that team leaders were not to discuss the Union with them.

⁴The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

⁵ Employee Carol Graddy testified that she asked McElroy why the Employer had to have a union on July 9. McElroy told Graddy that a union would make it harder for the Employer to fire employees and the employees would get more money.

⁶McElroy supervised approximately five employees, Ellis supervised two, and Patterson three.

⁷ Ribbon Sumyoo Corp., 308 NLRB 956, 965 fn. 13 (1992). See also Meridian Industries, 302 NLRB 464, 466 (1991).

⁸ Sil-Base Co., 290 NLRB 1179, 1181 (1988). See also Turner's Express, 189 NLRB 106 (1971).

about the union campaign. Indeed, the testimony of employee Carol Graddy confirms this. In July, Graddy asked Team Leader McElroy's opinion about unionization. Both Graddy and McElroy were unaware of McElroy's status as a statutory supervisor at this time. McElroy's statement that she believed two benefits adhered to unionization was a benign expression of opinion. Similarly, even though McElroy and Team Leader Ellis asked employee Caffiel how she intended to vote in this period before team leader status was determined, the resulting conversation among the three reflected their discussion of a controversial issue. The team leaders offered their personal opinions that benefits were to be gained from unionization.

The continued occasional expression of these opinions by team leaders in the period after they were identified as statutory supervisors does not warrant a contrary conclusion. The evidence shows only that McElroy and Team Leader Patterson told employees that the benefits of having a union included better pay and benefits and job protection. This expression of personal opinion by the team leaders contains no hint of reward by these supervisors for supporting the Union or punishment for refusing to do so. Rather, the team leaders made general statements pointing out the possible benefits of union representation. These types of comments are not objectionable.⁹

Accordingly, unlike the hearing officer, ¹⁰ we find no merit to the Employer's objection and we find that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time employees employed by the Employer in the patient services, nursing and radiology departments, the administrative aide and the PBX operator at 2150 Waterman Avenue, San Bernardino, California.

Excluded: All other employees including ophthalmology employees, professional employees, guards and supervisors as defined in the Act.

election, warranted setting aside the election and ordering a new election. The supervisor solicited the authorization cards that supported the petition, was the union's "contact man" during the organizational campaign, met with various union officials on a regular basis including on the day of the election, exhorted employees incessantly to vote for the union, and told employees that if they did not vote for the union, management intended to cut wages. Clearly this pervasive conduct far exceeds the occasional prounion comments expressed by the team leaders here and we therefore find it unnecessary to address the merits of *Sheraton*. More comparable are those cases, also cited by the hearing officer, where the Board found that a supervisor's conduct was not so inordinate as to lead the employees to fear possible retribution from the supervisor should the employees reject the union. Thus, in Sil-Base Co., supra, the Board found unobjectionable a supervisor's expression of personal opinion in favor of the union, made in response to employee questions addressed to him as the employer's most senior employee. And in Cal-Western Transport, 283 NLRB 453 (1987), and Meridian Industries, supra, supervisors engaged in a variety of prounion conduct which the Board found to be nothing more than the expression of personal opinion unaccompanied by threats and promises, conduct which could not reasonably have coerced or lured employees into supporting the union. Such is the conduct at issue here.

⁹ Wright Memorial Hospital v. NLRB, 771 F.2d 400, 405 (8th Cir. 1985).

¹⁰We note that the cases cited by the hearing officer are either distinguishable or actually support overruling the objection here. In *Sheraton Motor Inn*, 194 NLRB 733 (1971), the Board found that a "major" supervisor's active and outspoken support for the union throughout the organizational campaign, including the day of the